

Exhibit 3

Page 1

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW JERSEY
3 Civil Action No. 2:17-cv-04261(KM)(JBC)

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4 DVL, INC. and DVL KEARNY HOLDINGS,
5 LLC,

Plaintiffs,

6 -against-

7 CONGOLEUM CORPORATION and BATH
IRON WORKS CORPORATION,

8 Defendants.

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10 -----x
11 Jenner & Block LLP
12 919 Third Avenue
13 New York, New York

14 May 21, 2019

15 8:27 a.m.

16 Videotaped Deposition of HOWARD N.
17 FEIST, III in the above-entitled action,
18 held at the above time and place, taken
19 before Dawn Matera, a Shorthand Reporter
20 and Notary Public of the State of New
York.

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<p>1 APPEARANCES :</p> <p>2 ZARWIN BAUM DEVITO KAPLAN SCHAER TODDY P.C.</p> <p>3 Attorneys for Plaintiffs 1818 Market Street 5 13th Floor Philadelphia, Pennsylvania 19103 6 (267)765-7341</p> <p>7 By: EITAN D. BLANC, ESQ. edblanc@zarwin.com</p> <p>8</p> <p>9 JENNER & BLOCK LLP</p> <p>10 Attorneys for Defendant Bath Iron Works Corporation 11 353 N. Clark Street Chicago, Illinois 60654 12 (312)222-9350</p> <p>13 By: WADE THOMSON, ESQ. wthomson@jenner.com</p> <p>14 MICHAEL A. DOORNWEERD, ESQ. mdoornweerd@jenner.com</p> <p>15</p> <p>16 GIBBONS P.C.</p> <p>17 Attorneys for Defendant Congoleum Corporation and the witness 18 One Gateway Center Newark, New Jersey 07102 19 (973)596-4895</p> <p>20 By: KEVIN W. WEBER, ESQ. kweber@gibbonslaw.com</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 2</p> <p>1 THE VIDEOGRAPHER: We are going on the record at 8:27 a.m. on May 21st, 2019. Please note that the microphones are sensitive and may pick up whispering and private conversation. Please place all cells away from the microphones as they can interfere with deposition audio.</p> <p>9 Audio and video recording will continue to take place unless all parties agree to go off the record.</p> <p>12 This is media unit 1 of the video-recorded deposition of Howard N. Feist taken by counsel for the Defendant in the matter of DVL, Incorporated and DVL Kearny Holdings, LLC versus Congoleum Corporation and Bath Iron Works Corporation. This case is filed in the U.S. District Court for the District of New Jersey.</p> <p>21 We are here at the offices of Jenner & Block, located at 919 Third Avenue, New York, New York. My name is Deverell Write representing Veritext Solutions, and the court</p> <p>Page 3</p> <p>1 APPARENCES : (Continued)</p> <p>2</p> <p>3 Also Present:</p> <p>4 CHRIS O'CONNOR, President and CEO of Congoleum Corporation</p> <p>5 DEVERELL WRITE, Videographer</p> <p>7 ~oOo~</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 4</p> <p>1 reporter is Dawn Matera from Veritext Legal Solutions.</p> <p>3 At this time will counsel please state their appearances.</p> <p>5 MR. THOMSON: Wade Thomson and Mike Doornweerd on behalf of Defendant Bath Iron Works.</p> <p>8 MR. BLANC: Eitan Blanc on behalf of the Plaintiffs.</p> <p>10 MR. WEBER: Kevin Weber from Gibbons P.C. on behalf of Congoleum and Mr. Feist.</p> <p>13 THE VIDEOGRAPHER: Will the reporter please swear in the witness.</p> <p>15 H O W A R D N . F E I S T , III, having been first duly sworn by Dawn Matera, a Notary Public, was examined and testified as follows:</p> <p>19 EXAMINATION BY MR. THOMSON:</p> <p>20 Q. Good morning Mr. Feist, I am very aware that you've been deposed many times before. But I do want to go over some of the ground rules so we have a good record today. And the most important is that I would ask that we try</p> <p>Page 5</p>
		2 (Pages 2 - 5)

<p>1 A. Yes.</p> <p>2 Q. And from roughly the year 2000</p> <p>3 through 2012, you were also an officer of</p> <p>4 American Biltrite?</p> <p>5 A. And they were my employer.</p> <p>6 Q. And they were your employer,</p> <p>7 thank you. And generally speaking, what</p> <p>8 is the relationship between Congoleum and</p> <p>9 American Biltrite, or what was it during</p> <p>10 those 12 years?</p> <p>11 A. It goes back before those 12</p> <p>12 years. So in 1993, '92 or '93, Congoleum</p> <p>13 acquired the Amtico Flooring Division of</p> <p>14 American Biltrite for a combination of</p> <p>15 cash and stock. And after that</p> <p>16 combination, Roger Marcus, who was CEO of</p> <p>17 American Biltrite, became CEO of</p> <p>18 Congoleum as well.</p> <p>19 Q. And at some point Congoleum</p> <p>20 became a publicly traded company,</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. What was your role in the</p> <p>24 public filings for Congoleum from 2003</p> <p>25 through to 2010?</p>	<p>Page 14</p> <p>1 Q. And was your work pursuant to a</p> <p>2 shared service agreement?</p> <p>3 A. The shared service agreement</p> <p>4 covered like IT services. It covered</p> <p>5 urethane. There was a management fee and</p> <p>6 a personal services agreement. I don't</p> <p>7 remember all of the details. The</p> <p>8 agreements are publicly available.</p> <p>9 Q. Did you receive performance</p> <p>10 reviews while you were CFO of Congoleum?</p> <p>11 A. Nothing formal I don't believe.</p> <p>12 Q. In 2012, can you explain why</p> <p>13 you ceased being officer of Congoleum?</p> <p>14 A. Congoleum came out of</p> <p>15 bankruptcy on June 30th, 2010 or July 1st</p> <p>16 and there was a two-year management</p> <p>17 agreement that basically kept the</p> <p>18 existing management structure in place</p> <p>19 for two years. And that agreement was</p> <p>20 not renewed.</p> <p>21 Q. And do you have any severance</p> <p>22 agreement with Congoleum?</p> <p>23 A. No.</p> <p>24 Q. Do you have any pension of any</p> <p>25 kind with Congoleum?</p>
<p>1 A. I was the chief financial</p> <p>2 officer, so I signed off on anything that</p> <p>3 was filed in the SEC.</p> <p>4 Q. As a practical matter, when you</p> <p>5 became employed by American Biltrite did</p> <p>6 you physically move your office?</p> <p>7 A. Yes, I actually moved in 1999.</p> <p>8 Q. Just logically, what would</p> <p>9 you say your percentage of work for being</p> <p>10 CFO of Congoleum versus being CFO of</p> <p>11 American Biltrite, how did that break</p> <p>12 down?</p> <p>13 A. It was maybe half and half.</p> <p>14 But there was some overlap too. So</p> <p>15 American Biltrite's results consolidated</p> <p>16 into those of Congoleum. So it wasn't</p> <p>17 like they were unrelated companies, they</p> <p>18 were, you know, really part of the same</p> <p>19 company. Subsidiary/parent relationship.</p> <p>20 Q. And as I understand it, for</p> <p>21 some employees or some individuals that</p> <p>22 worked for both companies, there were</p> <p>23 shared service agreements between the</p> <p>24 company, is that correct?</p> <p>25 A. Yes.</p>	<p>Page 15</p> <p>1 A. Yes.</p> <p>2 Q. And when does the pension</p> <p>3 become active?</p> <p>4 A. I have a vested benefit that</p> <p>5 dates back to when I severed employment</p> <p>6 in 2000.</p> <p>7 Q. And do you have any sense of</p> <p>8 today's value of that vested benefit</p> <p>9 package?</p> <p>10 A. My pension will be, you know,</p> <p>11 at age 65, depending on which option I</p> <p>12 take and after my ex-wife gets her piece</p> <p>13 of it, \$18,000 a year.</p> <p>14 Q. And I understand you have an</p> <p>15 indemnification agreement with Congoleum;</p> <p>16 is that correct?</p> <p>17 A. Yes.</p> <p>18 Q. And did you ask for that, can</p> <p>19 you explain how that came about?</p> <p>20 A. That was something that the new</p> <p>21 directors of Congoleum that were put in</p> <p>22 place after, after the bankruptcy,</p> <p>23 requested.</p> <p>24 Q. And I understand Congoleum is</p> <p>25 paying for your expenses for</p>

<p style="text-align: right;">Page 54</p> <p>1 A. I'm having trouble 2 understanding the question, which 3 Congoleum you're talking about in that. 4 Q. Sure. Let's come back to this 5 question. But let me do it this way. 6 A. There was no 1986 Congoleum in 7 1955. So it's a little confusing for me 8 to answer. 9 Q. Let me go back to this. These 10 are what you say are rights that 11 post-1986 the Congoleum flooring that you 12 worked for and that's suing Bath Iron 13 Works in this case, they have rights to 14 these 1955 policies, correct? 15 A. Rights under them, yes. 16 Q. Right. And my question is, as 17 of 1955, are you aware of whether the 18 entity that was running, that had this 19 policy in 1955, whether they did anything 20 other than flooring? 21 MR. WEBER: Objection to form. 22 A. I don't know who the insureds 23 were under that 1955 policy. 24 Q. You can put that to the side, 25 thanks.</p>	<p style="text-align: right;">Page 56</p> <p>1 Mr. Feist? We can take a break 2 whenever you want. 3 THE WITNESS: I'm fine. 4 Q. Mr. Feist, I want to switch 5 gears and discuss with you the coverage 6 action that pitted Congoleum in or around 7 the year 2000 against many of its 8 insurance carriers in a lawsuit in the 9 State Court in New Jersey. You're 10 familiar with that, correct? 11 A. Yes. 12 Q. And what was your role in 13 Congoleum for the coverage action? 14 A. I was the chief financial 15 officer. I was probably the point person 16 for most of the attorneys. 17 Q. Okay. And at that point in 18 time, during the coverage action, 19 Congoleum did not have in-house 20 attorneys, correct? 21 A. That's correct. 22 Q. Okay. And so you liaised with 23 outside counsel for the coverage action 24 in your role as CFO for Congoleum, 25 correct?</p>
<p style="text-align: right;">Page 55</p> <p>1 Mr. Feist, are you aware of a 2 ECRA, E-C-R-A, consent order with New 3 Jersey EPA that was entered into in 1986? 4 A. I think I know what it is, yes. 5 Q. Can you tell me what you recall 6 about that? 7 A. New Jersey had a law where or 8 has a law, when a property changes hands, 9 there has to be a -- you can't sell a 10 property and dump it on the state. So 11 there has to be financial responsibility 12 for the cleanup of the property. And I 13 don't know exact particulars, but it had 14 to do with the fact that the property was 15 sold and there was somebody in a position 16 to do any work that might be needed. 17 Q. And who would have been 18 involved in negotiating or amending that 19 transfer of that liability as part of the 20 1986 agreements, if you know? 21 A. It would have been an attorney. 22 I'm not sure. Maybe Russ. But I'm not 23 sure. 24 MR. THOMSON: We've been going 25 about an hour, are you okay,</p>	<p style="text-align: right;">Page 57</p> <p>1 A. Yes. 2 Q. And who was the most involved 3 from Congoleum for the coverage action in 4 terms of working with outside counsel, if 5 it wasn't you? 6 A. It was me. 7 Q. So in that role in liaising 8 with outside counsel, you would review 9 pleadings, sometimes before they were 10 filed in the coverage action, correct? 11 A. Yes. 12 Q. We will get to this in more 13 detail, but at some point Congoleum filed 14 for bankruptcy after the coverage action 15 had been filed, right? 16 A. Yes. 17 Q. And what is your understanding 18 of the relationship to Congoleum's 19 bankruptcy in the 2000's to the coverage 20 action? 21 MR. WEBER: I will object to the 22 form. 23 A. They were largely intertwined. 24 The lack of insurance coverage is what 25 forced Congoleum into bankruptcy. That's</p>

<p>1 probably the simplest answer.</p> <p>2 Q. From your perspective, do you</p> <p>3 know how the coverage action ended for</p> <p>4 Congoleum?</p> <p>5 A. Well, it ended when the</p> <p>6 bankruptcy was confirmed, I guess.</p> <p>7 Q. And part of what Congoleum was</p> <p>8 seeking coverage for in the coverage</p> <p>9 action was for environmental claims</p> <p>10 against Congoleum, correct?</p> <p>11 A. We're seeking to -- I mean, it</p> <p>12 was really driven by the asbestos. But</p> <p>13 obviously we wanted to keep whatever</p> <p>14 insurance rights we could keep.</p> <p>15 Q. Mr. Feist, I appreciate that.</p> <p>16 I ask that you answer my questions and</p> <p>17 the day will go a lot quicker. Part of</p> <p>18 what Congoleum was seeking coverage for</p> <p>19 in the coverage action was for</p> <p>20 environmental claims against Congoleum,</p> <p>21 correct?</p> <p>22 A. The coverage action was seeking</p> <p>23 to clarify the insurance contracts</p> <p>24 without respect to the specific</p> <p>25 liabilities.</p>	<p>Page 58</p> <p>1 was seeking coverage, correct?</p> <p>2 A. As part of resolving it, of</p> <p>3 course, we wanted to get whatever</p> <p>4 environmental coverage we could be</p> <p>5 entitled to.</p> <p>6 Q. So the answer to my question is</p> <p>7 yes, part of the coverage action was</p> <p>8 because Congoleum was seeking coverage</p> <p>9 for environmental actions, yes or no?</p> <p>10 MR. WEBER: Object to the form.</p> <p>11 You can answer.</p> <p>12 A. I'm not sure I would agree with</p> <p>13 that, because I would say if there had</p> <p>14 not been disputes over asbestos coverage,</p> <p>15 there would not have been a coverage</p> <p>16 action.</p> <p>17 Q. I appreciate that. But once</p> <p>18 there was a coverage action, Congoleum</p> <p>19 brought its disputes for environmental</p> <p>20 liabilities into the coverage action,</p> <p>21 yes?</p> <p>22 A. Yes, it included all insurance</p> <p>23 rights.</p> <p>24 Q. Including claims for</p> <p>25 environmental coverage, correct?</p>
<p>1 Q. And part of the disputes with</p> <p>2 its insurers that led to Congoleum filing</p> <p>3 the coverage action was because there was</p> <p>4 disputes concerning coverage that</p> <p>5 Congoleum was seeking for environmental</p> <p>6 claims against Congoleum, correct?</p> <p>7 A. I wouldn't agree with the way</p> <p>8 you put that.</p> <p>9 Q. Well, let's look at -- why</p> <p>10 would you not agree with that?</p> <p>11 A. Because it wasn't --</p> <p>12 THE WITNESS: Can you reread the</p> <p>13 question.</p> <p>14 (Record read.)</p> <p>15 A. Yeah, so it was disputes</p> <p>16 related to coverage of asbestos. First</p> <p>17 of all, it was the insurers that</p> <p>18 initiated the coverage action for the one</p> <p>19 thing. And it was disputes over the</p> <p>20 coverage for asbestos claims that was</p> <p>21 driving that litigation.</p> <p>22 Q. I appreciate that. But also</p> <p>23 part of that litigation, whatever you</p> <p>24 want to say was driving it, were</p> <p>25 environmental claims for which Congoleum</p>	<p>Page 59</p> <p>1 A. Yes.</p> <p>2 Q. I am going to hand you what</p> <p>3 we're marking as Feist Exhibit 5.</p> <p>4 (Feist Exhibit 5, Document</p> <p>5 entitled "First Amended Answer,</p> <p>6 Counterclaim, Cross-Claim, Third-Party</p> <p>7 Complaint and Jury Demand", was so</p> <p>8 marked for identification, as of this</p> <p>9 date.)</p> <p>10 Q. Mr. Feist, I've handed you</p> <p>11 Feist Exhibit 5, and that is a pleading</p> <p>12 from the coverage action entitled "First</p> <p>13 Amended Answer, Counterclaim,</p> <p>14 Cross-Claim, Third-Party Complaint and</p> <p>15 Jury Demand." And if you flip to page 3,</p> <p>16 you could see this was filed by Congoleum</p> <p>17 by and through its attorneys Dughi Hewit.</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And this document, page 34, was</p> <p>21 filed on February 28th, 2002. Are you</p> <p>22 familiar with this document?</p> <p>23 A. I haven't seen it in a long</p> <p>24 time, but I have seen it before.</p> <p>25 Q. Generally speaking, for a</p>

16 (Pages 58 - 61)

<p>1 pleading of this nature in the coverage 2 action, would you have seen it before it 3 was filed?</p> <p>4 A. Yes.</p> <p>5 Q. Flip to page 8, please, of this 6 document. And as I read the title, this 7 was both an answer to a complaint, but 8 also there were counterclaims, and this 9 may get to the point you were making 10 earlier, that under the introduction it 11 states it's a civil action for 12 declaratory relief against the 13 Plaintiffs, right?</p> <p>14 So in short, Congoleum was 15 seeking an action against its insurance 16 carriers to provide coverage, right?</p> <p>17 A. I'm sorry, say that again.</p> <p>18 Q. Yeah, it's a generalized 19 question. I don't mean to ask you for a 20 legal. You understood, to your point, 21 the insurers had initiated the coverage 22 action, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And then Congoleum countersued 25 against them for coverage, correct?</p>	Page 62	<p>1 predecessors."</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. And as you sit here today, do 5 you believe that representation made to 6 the Court is false in any way?</p> <p>7 MR. WEBER: Objection to form.</p> <p>8 A. No.</p> <p>9 Q. And at this time, right, you 10 had the binder of the 1986 documents 11 available to you, correct?</p> <p>12 A. Yes.</p> <p>13 Q. And you also had detailed 14 information about Congoleum's corporate 15 history, correct?</p> <p>16 A. Yes.</p> <p>17 Q. Including you had provided the 18 insurers detailed information regarding 19 Congoleum's corporate history and a 20 notebook that contained the corporate 21 history; is that right?</p> <p>22 A. I don't recall that.</p> <p>23 Q. I am going to hand you as Feist 24 Exhibit 6, which amazingly was also Feist 25 Exhibit 6 in August 23 of 2003.</p>	Page 64
<p>1 A. Well, to include all of the 2 carriers.</p> <p>3 Q. Right.</p> <p>4 A. Right.</p> <p>5 Q. In describing the parties 6 involved in the counterclaims, if you 7 look at page 9, under Congoleum 8 Corporation, it's paragraph 6, do you see 9 that?</p> <p>10 A. Yes.</p> <p>11 Q. And it reads over onto page 10, 12 and in 2002 Congoleum filed this document 13 with the Court, which you would have 14 reviewed beforehand, and in the first 15 full sentence on page 10 reads "Congoleum 16 is engaged principally in the business of 17 manufacturing resilient-sheet and tile 18 floor coverings. Congoleum is a 19 successor to Congoleum-Nairn, Inc. and 20 Congoleum Industries, Inc., as well as a 21 successor to other corporations using the 22 name Congoleum Corporation and is 23 entitled to all rights and benefits of 24 the insurance contracts issued by 25 Defendants to such Congoleum</p>	Page 63	<p>1 (Feist Exhibit 6, Document 2 bearing Bates number CONG_0328620, was 3 so marked for identification, as of 4 this date.)</p> <p>5 Q. So we will go back to Exhibit 6 Feist 5, but just focusing for one second 7 to the line of questioning I got into, 8 Mr. Feist, on Feist Exhibit 6, that 9 document is a certification that you 10 signed and that was submitted in the 11 coverage action in 2003.</p> <p>12 And I just want to draw your 13 attention first to the first page under 14 where it says certification of Howard N. 15 Feist, III, paragraph 1, "I am the chief 16 financial officer of Congoleum 17 Corporation. I am fully familiar with 18 the facts recited herein. I submit this 19 certification in opposition to the 20 motions for summary judgment filed by 21 certain excess insurers."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. And to my question, if you 25 could just flip to where paragraphs 13</p>	Page 65

<p style="text-align: right;">Page 66</p> <p>1 and 14 are. It's on page 6 of the 2 document, I believe. And there is a 3 discussion in paragraph 13 about there 4 being meetings in July 2001 among and 5 between Congoleum and some of its 6 insurers, correct?</p> <p>7 A. Yes.</p> <p>8 Q. And at the top of paragraph 14 9 it reads, your certification reads 10 "During the two day meeting Congoleum 11 went to significant effort and expense to 12 provide the insurers with detailed 13 information regarding its corporate 14 history."</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And sitting here today, do you 18 recall what that detailed information 19 regarding the corporate history was that 20 was provided to the insurers?</p> <p>21 A. I mean I don't recall 22 specifically, but I am sure it would have 23 been a history of the business.</p> <p>24 Q. Okay. And in 15 there is a 25 reference that Congoleum did several</p>	<p style="text-align: right;">Page 68</p> <p>1 in the United States or its states or 2 territories abroad," et cetera, 3 et cetera, et cetera, "have alleged that 4 Congoleum is liable under," and then it 5 reads various types of claims. Do you 6 see that?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And the last sentence of 9 that paragraph reads "The underlying 10 environmental claims seek damages and 11 other relief for alleged property damage, 12 bodily injury and personal injury as 13 defined in the policies resulting from 14 environmental contamination and/or 15 exposures alleged to have occurred in 16 connection with certain sites in New 17 Jersey and elsewhere."</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And in paragraph 29, there is a 21 listing of underlying environmental 22 claims, including, without limitation, 23 ten sites located in New Jersey. Do you 24 see that?</p> <p>25 A. Yeah. They are not all in New</p>
<p style="text-align: right;">Page 67</p> <p>1 other things, conducted a tour of one of 2 its manufacturing facilities and a 3 notebook that contained, among other 4 things, corporate history was made 5 available to the insurers at the meeting. 6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Are you familiar with what that 9 notebook was or what it contained 10 concerning corporate history?</p> <p>11 A. I don't remember what was in 12 that.</p> <p>13 Q. Okay. You can put Exhibit 6 to 14 the side and focusing back on Feist 15 Exhibit 5, which is that first amended 16 answer. If you could flip, please, to 17 page 16. And right above paragraph 28 18 there is a heading that reads "The 19 Underlying Environmental Claims." Do you 20 see that?</p> <p>21 A. Yes.</p> <p>22 Q. It says "The United States 23 Environmental Protection Agency, the New 24 Jersey Department of Environmental 25 Protection, other governmental agencies</p>	<p style="text-align: right;">Page 69</p> <p>1 Jersey.</p> <p>2 Q. Fair point. Ten sites located 3 in New Jersey and elsewhere. Thank you 4 for the correction. Right?</p> <p>5 A. Yes.</p> <p>6 Q. And number 6 there is the 7 Passaic River, correct?</p> <p>8 A. Correct.</p> <p>9 Q. And just back to our earlier 10 back and forth, these underlying 11 environmental claims, these were part of 12 what Congoleum was seeking coverage for 13 in the coverage action, correct?</p> <p>14 A. Well, these were allegations. 15 But to the extent they ultimately 16 developed into claims, depending on the 17 facts, you know, we certainly would have 18 wanted to have insurance for them.</p> <p>19 Q. Right. So Congoleum's attempt 20 to get coverage for these environmental 21 claims was part of the coverage action, 22 right?</p> <p>23 MR. WEBER: Objection to form. 24 You can answer.</p> <p>25 A. I guess you could say yes.</p>

18 (Pages 66 - 69)

<p>1 Q. Did you have an understanding 2 that the Passaic River contamination site 3 implicated the Kearny operations of 4 Congoleum?</p> <p>5 MR. WEBER: Objection to form. 6 You can answer.</p> <p>7 A. I really didn't know much about 8 the Passaic River site other than it had 9 been identified. It was not, you know, 10 we were dealing with 100,000 asbestos 11 lawsuits. This was not big on the radar.</p> <p>12 Q. Big enough for your attorneys 13 to put it in a complaint that it filed 14 with the Court, right?</p> <p>15 MR. WEBER: Objection.</p> <p>16 A. Well, sure.</p> <p>17 Q. And to be clear, when, if you 18 recall, did you first become aware that 19 the U.S. EPA was considering Congoleum as 20 a potential responsible party as part of 21 the Passaic River Superfund for 22 contamination stemming from Kearny, New 23 Jersey?</p> <p>24 A. I know there was an inquiry 25 from the EPA, I don't remember the date</p>	<p style="text-align: right;">Page 70</p> <p>1 we had been discussing, generally, EPA 2 requests for information. Do you recall 3 the EPA making a request for information 4 to Congoleum concerning a Martin Aaron 5 company site?</p> <p>6 A. I don't.</p> <p>7 Q. And generally speaking, do you 8 recall what the Martin Aaron company site 9 was?</p> <p>10 A. I don't.</p> <p>11 MR. THOMSON: Can you please 12 mark this as Exhibit 7. (Feist Exhibit 7, Document bearing Bates number DH&D-BIW-026594, was so marked for identification, as of this date.)</p> <p>17 Q. Exhibit 7, Mr. Feist, contains 18 a cover letter dated August 15th, 2003 19 and it's from the law firm of Dughi Hewit 20 to New Jersey's -- or sorry, to the U.S. 21 EPA. Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. And enclosed it states on the 24 first page of this letter, number 1 is a 25 response to a 104(e) request for Sid</p>
<p>1 of it.</p> <p>2 Q. And do you know in what 3 capacity you would have been made aware 4 of inquiries, generally speaking, from 5 the EPA concerning potential 6 contamination allegations concerning 7 Congoleum?</p> <p>8 A. We got a letter from the 9 attorneys for the audit every year 10 identifying any contingent liabilities 11 that would have warranted disclosure. So 12 if it had been in that letter, I would 13 have seen it.</p> <p>14 MR. THOMSON: Why don't we go 15 off the record and take a quick 16 five-minute break.</p> <p>17 THE VIDEOGRAPHER: The time on 18 the video monitor is 9:44 a.m. We are 19 off the record. This ends media 1. (Off the record.)</p> <p>21 THE VIDEOGRAPHER: We are back 22 on the record. The time on the video 23 monitor is 9:53 a.m., and this starts 24 media 2.</p> <p>25 Q. Mr. Feist, prior to our break</p>	<p style="text-align: right;">Page 71</p> <p>1 Nayar information. Number 2 is corporate 2 history of Congoleum. Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Now, if you flip over to 5 the enclosed response of Congoleum 6 Corporation to 104(e), it's the third 7 page of the document I handed you.</p> <p>8 A. Sorry, which page?</p> <p>9 Q. The third page.</p> <p>10 MR. WEBER: 099, right?</p> <p>11 MR. THOMSON: Yes. Take the 12 first page and just flip the first 13 page back. There you go.</p> <p>14 Q. The response of Congoleum 15 Corporation to the 104(e) request for 16 information. Generally speaking, do you 17 have an understanding of what a 104(e) 18 request is?</p> <p>19 A. Just that it's an EPA request 20 for information. Nothing beyond that.</p> <p>21 Q. And if you flip -- now I am 22 going to look at the Bates numbers, 23 right, so this is 9099. If you flip two 24 pages back to 9101, there is a question 25 at the top of that page. It's Q1 and</p>

<p>1 A. He was an attorney at Gilbert 2 Heintz. 3 Q. And one law firm that I didn't 4 check the box on. What did you 5 understand Gilbert Heintz to be in 6 Congoleum's bankruptcy? 7 A. I call them legal strategy. 8 They were kind of a boutique firm that 9 dealt with asbestos insurance matters. 10 Q. If you look at the second 11 e-mail from the top, the subject line 12 there is Congoleum pre-1986 policies. Do 13 you see that? 14 A. Yup. 15 Q. And you were included on that 16 one. And then when you send an e-mail to 17 Mr. Feldman on September 15th, 2005, it's 18 the same subject. And you have an 19 attachment titled "Congo Corporate 20 Structure History pdf." Do you see that? 21 A. Yes. 22 Q. And if you look at the 23 attachment, there is a bunch of 24 handwriting. Do you see that? 25 A. Yes.</p>	<p style="text-align: right;">Page 98</p> <p>1 settlements with the insurance carriers, 2 the insurance carriers obviously want the 3 policies to be completely extinguished. 4 The legal team that we had did not 5 appreciate Congoleum's history. So when 6 it came time to actually draft the 7 settlement documents, they needed to be 8 educated on the history. 9 Q. Makes sense. To your point 10 about insurance carriers wanting to 11 extinguish the, I don't want to put words 12 in your mouth. 13 A. The policy. 14 Q. The policy, right. You 15 understand that the common phrasing of 16 that in a bankruptcy is a buyback of a 17 policy, correct? 18 A. Yes. 19 Q. And in terms of the insurers 20 wanting to extinguish those rights, what, 21 if anything, does that have to do with 22 the corporate history of Congoleum? 23 A. Because Congoleum could only 24 offer up its rights under these policies, 25 and not all rights under the policies.</p>
<p>1 Q. Do you recognize that? 2 A. Yes. 3 Q. And what is that document? 4 A. It's the historical file that I 5 had of these transactions. 6 Q. Do you know whose notes these 7 are? 8 A. It says I had it from Tony 9 Harwood at Patterson bell nap, who got it 10 from Al DiMillo. 11 Q. Do you know who Al DiMillo is? 12 A. I think he was old Congoleum's 13 tax guy. 14 Q. Do you remember why you were 15 sending this to your outside attorneys in 16 September of 2005? 17 MR. WEBER: Just object to 18 the -- well, I will give the witness 19 an instruction not to disclose a 20 communication from your attorney. If 21 you can do so without -- if you can 22 answer the question without doing so, 23 you may. 24 A. I think generally, Congoleum's 25 history is complicated. In negotiating</p>	<p style="text-align: right;">Page 99</p> <p>1 Q. And how did you come to that 2 understanding? 3 A. Maybe, I'm not sure -- 4 Q. How did you come to the 5 understanding of what rights -- 6 A. You can't sell something that 7 doesn't belong to you. 8 Q. So first grade is what you're 9 saying? 10 A. Yeah. 11 Q. As of this time, 2005, you 12 still had available to you the actual 13 1986 transaction documents, correct? 14 A. Yes. 15 Q. You can put that document to 16 the side. I am going to hand you what we 17 are marking as Feist Exhibit 11. 18 (Feist Exhibit 11, Excerpts from 19 privilege log provided by Congoleum, 20 was so marked for identification, as 21 of this date.) 22 Q. You'd better get your glasses 23 out for this one. So Mr. Feist, I will 24 direct and make sure to read to you 25 entries because of the small font here.</p>

<p style="text-align: right;">Page 102</p> <p>1 What I've handed you is 2 excerpts from a privilege log provided by 3 Congoleum in this matter. Do you have a 4 general understanding of what a privilege 5 log is?</p> <p>6 A. Yes.</p> <p>7 Q. So what we did is we took the 8 table they provided us and put it in 9 chronological order for excerpts that I 10 am going to ask you about. Without 11 regard to this document right now, do you 12 recall there generally being a question 13 about availability of corporate history 14 docs in the fall of 2005?</p> <p>15 A. A question about availability?</p> <p>16 Q. Yes.</p> <p>17 A. No. I mean, not -- I knew what 18 we had. The attorneys might not have 19 known something was available until they 20 asked the right person.</p> <p>21 Q. Perfectly understandable. So 22 if you look at kind of midway down the 23 page, and if you see the numbers in the 24 left column are not consistent. What is 25 consistent is the sort date, the second</p>	<p style="text-align: right;">Page 104</p> <p>1 Q. And if you look down, two 2 entries below that, on September 28th, 3 2005, entry 979, there is an e-mail that 4 has a different subject header, Congoleum 5 transactions. And you are one of the 6 people who receives an e-mail from Don 7 Golemme, and then there is a bunch of 8 outside counsel. And that document is 9 described as an attorney/client 10 communication regarding Congoleum 11 transactions and the availability of such 12 documents. Do you see that?</p> <p>13 A. Mm-mmm.</p> <p>14 Q. And there is another one on 15 September 28th, 2005, entry 1722, at the 16 very bottom of this page. Do you see 17 that?</p> <p>18 A. Yup.</p> <p>19 Q. And then I won't go through all 20 of them, Mr. Feist, other than to say if 21 you look on page 2, and pretty much from 22 the top of that page to the second to 23 last entry, about nine entries, all from 24 September 2005 in which you're copied, 25 and the communications are described as</p>
<p style="text-align: right;">Page 103</p> <p>1 column of dates. 2 So if you look at 9/15/2005, 3 which is several entries, but the entry I 4 am looking at is 1720. Do you see that 5 entry?</p> <p>6 A. Yes.</p> <p>7 Q. And the e-mail subject is 8 Congoleum pre-1986 policies. The e-mail 9 is from you to Mr. Feldman, and I believe 10 this is a document we were just looking 11 at, and the description of that document 12 from Congoleum attorneys is 13 attorney/client communications regarding 14 Congoleum's corporate history and the 15 availability of such documents. Do you 16 see that?</p> <p>17 A. Yes.</p> <p>18 Q. And then right below that, also 19 on September 15th, there is another 20 e-mail entry, 1721, also the same 21 subject, attorney/client communication 22 regarding Congoleum's corporate history 23 and availability of documents. Do you 24 see that?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 105</p> <p>1 attorney/client communications regarding 2 Congoleum transactions and availability 3 of such documents. Do you see those?</p> <p>4 A. Yes.</p> <p>5 Q. The one exception to that is 6 entry 1725 on 9/29/2005, the description 7 is listed as attorney/client 8 communication regarding Congoleum's 9 corporate history, okay.</p> <p>10 So we've now looked at entries 11 representing over 14 e-mails, including 12 you and outside counsel, about Congoleum 13 history and Congoleum transactions in 14 September of 2005. Mr. Feist, you don't 15 have any reason to doubt that you were 16 included on that many e-mails, at least, 17 in September of 2005 regarding those 18 subjects, do you?</p> <p>19 A. No.</p> <p>20 Q. And do you recall being 21 included in several more e-mails in 22 October of 2005 concerning Congoleum's 23 corporate history?</p> <p>24 A. I don't specifically recall it.</p> <p>25 Q. If you look at page 3 of the</p>

<p style="text-align: right;">Page 106</p> <p>1 document I just handed you. It starts at 2 the very top, the first entry 885, date 3 October 7th, 2005, the e-mail is from 4 you. The subject matter is Congoleum 5 transactions. The document is described 6 attorney/client communication regarding 7 Congoleum transactions and the 8 availability of such document. Do you 9 see that?</p> <p>10 A. Yes.</p> <p>11 Q. And the next one, two, three, 12 three entries below that are all from 13 October -- well, let's do them one by 14 one, 1728, the very next one, 10/17, the 15 e-mail subject is now Congoleum, between 16 you and Mr. Feldman. And that is 17 described, again, the same way, correct?</p> <p>18 A. Yes.</p> <p>19 Q. The next entry is 887, this one 20 October 13th, 2005, the e-mail subject is 21 forward bound volume index, this is from 22 you to Mr. Golemme. And it's listed as 23 attorney/client communication regarding 24 Congoleum transactions and the 25 availability of such documents, and there</p>	<p style="text-align: right;">Page 108</p> <p>1 exposure?</p> <p>2 MR. WEBER: So I need to give 3 the witness an instruction. The 4 substance of negotiations with the 5 carriers is protected by more than one 6 confidentiality order. So you're not 7 to disclose the substance of specific 8 negotiations with the carrier. But if 9 you can answer Mr. Thomson's question 10 in a more general sense, you may do 11 so.</p> <p>12 Do you need the question read 13 back?</p> <p>14 THE WITNESS: Yes, I do. 15 (Record read.)</p> <p>16 A. Generally, Century and any 17 carrier would want to extinguish as much 18 liability as possible. Not just 19 asbestos, but also environmental and of 20 course for everybody. We were trying to 21 keep as much coverage as possible.</p> <p>22 Q. And do you recall, sitting here 23 today, some of the specific settlement 24 negotiations, without disclosing them, 25 concerning settlement, the settlement</p>
<p style="text-align: right;">Page 107</p> <p>1 is no attorney included on here.</p> <p>2 Generally speaking, do you 3 recall what the bound volume index was 4 that you were referring to?</p> <p>5 A. I don't. But it probably was 6 the 1986, you know, given this e-mail and 7 the nature of the questions. I don't 8 think -- but I am just guessing.</p> <p>9 Q. So it could be the bound 10 volumes that you still had in your 11 possession at that time of the '86 deals?</p> <p>12 A. Yes.</p> <p>13 Q. I am going to jump forward to 14 November of 2005. And a slightly 15 different topic, Mr. Feist. Do you 16 recall having e-mail communications with 17 your outside attorneys concerning 18 environmental exposure issues and the 19 Century settlement?</p> <p>20 A. Yes.</p> <p>21 Q. And if you can, without 22 disclosing attorney/client 23 communications, what was the issue 24 between Century and Congoleum relating to 25 the settlement and environmental</p>	<p style="text-align: right;">Page 109</p> <p>1 with Century and Congoleum as it relates 2 to environmental exposure?</p> <p>3 A. No.</p> <p>4 Q. But suffice it to say when the 5 settlement agreement between Congoleum 6 and Century was ultimately signed by you 7 in 2006, that extinguished any ability 8 for anyone to go after Century for 9 environmental claims, correct?</p> <p>10 MR. WEBER: Objection to form. 11 You can answer.</p> <p>12 A. Extinguished Congoleum's 13 rights. I don't think it extinguished 14 anybody else's rights.</p> <p>15 Q. Congoleum -- Century bought 16 back the policies, correct?</p> <p>17 A. They bought back Congoleum's 18 rights under the policies. Not the 19 rights of other insureds, as I understand 20 it.</p> <p>21 Q. We will get back to that. But 22 certainly as it relates to Congoleum and 23 Century, Congoleum, as part of settlement 24 with Century, negotiated for its 25 environmental rights to be extinguished,</p>

28 (Pages 106 - 109)

<p>1 correct?</p> <p>2 A. Yes.</p> <p>3 Q. If you look at Exhibit 11,</p> <p>4 again, please, - and kind of the middle</p> <p>5 of the page starting on November 17th,</p> <p>6 2005, entry 1758, the e-mail subject is</p> <p>7 environmental exposure site info for Ace.</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And you're included there. And</p> <p>11 it's described as attorney forward of</p> <p>12 settlement communications with Century</p> <p>13 withheld pursuant to the 2002 protective</p> <p>14 order. Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. And without going through them</p> <p>17 in detail, Mr. Feist, if you look at the</p> <p>18 next one, two, three, four, five entries,</p> <p>19 those are all entries in which you're</p> <p>20 included on communications in November of</p> <p>21 2005 relating to Congoleum exposure site</p> <p>22 info and environmental exposure, correct?</p> <p>23 A. Yes.</p> <p>24 Q. The last one, 1766, dated</p> <p>25 November 21st, 2005 is an e-mail directly</p>	<p>Page 110</p> <p>1 the settlement with Century and</p> <p>2 Congoleum, do you recall that being an</p> <p>3 issue of discussion with Century during</p> <p>4 the settlement negotiations?</p> <p>5 MR. WEBER: Objection. Sorry,</p> <p>6 let me hear the question read back.</p> <p>7 (Record read.)</p> <p>8 MR. WEBER: You can answer that</p> <p>9 yes or no.</p> <p>10 A. I'm not sure I can, no. I</p> <p>11 mean, it was an element that needed to</p> <p>12 be -- you know, again, we could not sell</p> <p>13 back something that didn't belong to us.</p> <p>14 Century needed to understand why that was</p> <p>15 the case. So there was a lot of</p> <p>16 education around the corporate history</p> <p>17 that had to take place.</p> <p>18 Q. In terms of understanding the</p> <p>19 intent of Century and Congoleum in</p> <p>20 reaching that agreement, would the</p> <p>21 communications with Century prior to that</p> <p>22 settlement shed light on that subject of</p> <p>23 what the parties' intents were concerning</p> <p>24 whose rights were being extinguished?</p> <p>25 MR. WEBER: Objection to form.</p>
<p>Page 111</p> <p>1 between Norman Spindel at Lowenstein and</p> <p>2 Tancred Schiavoni at O'Melveny. Do you</p> <p>3 see that?</p> <p>4 A. Yes.</p> <p>5 Q. And you were copied on that,</p> <p>6 right?</p> <p>7 A. Yes.</p> <p>8 Q. The subject is Congoleum</p> <p>9 environmental site info for Century.</p> <p>10 Sitting here today, do you recall if you</p> <p>11 were involved in the negotiations or</p> <p>12 communications at least directly with</p> <p>13 Century's attorney Tancred Schiavoni?</p> <p>14 A. I was not negotiating with him</p> <p>15 directly. But that would have been done</p> <p>16 by the attorneys.</p> <p>17 Q. Do you have a recollection as</p> <p>18 you sit here today why you would have</p> <p>19 been copied on one of those e-mails with</p> <p>20 outside counsel for Century?</p> <p>21 A. Well, because they were keeping</p> <p>22 me informed.</p> <p>23 Q. And to your point, just a</p> <p>24 couple of answers ago, whether the rights</p> <p>25 of other people were extinguished through</p>	<p>Page 113</p> <p>1 A. Sorry, say that again?</p> <p>2 Q. The communications that you</p> <p>3 were involved in between Century and</p> <p>4 Congoleum, right, these ones that I am</p> <p>5 not allowed to ask you about, or you're</p> <p>6 not allowed to answer, right, those would</p> <p>7 shed light on what the parties' intent</p> <p>8 were concerning the extinguishing of</p> <p>9 rights for various parties, right?</p> <p>10 MR. WEBER: Objection to form.</p> <p>11 A. Well, the documents, you've</p> <p>12 seen the history. I don't think --</p> <p>13 again, the insurance companies would have</p> <p>14 wanted as broad a release as possible.</p> <p>15 And we would have wanted to limit that,</p> <p>16 we, as Congoleum at the time, would have</p> <p>17 wanted to limit that release to what we</p> <p>18 had the rights to release.</p> <p>19 Q. Why would you want to limit it</p> <p>20 to --</p> <p>21 A. Because we couldn't sell</p> <p>22 something that didn't belong to us.</p> <p>23 Q. And to be clear, the</p> <p>24 communications between you and your</p> <p>25 attorneys and Century, that would shed</p>

<p style="text-align: right;">Page 118</p> <p>1 regarding Congoleum's corporate history. 2 Do you see that? 3 A. Yes. 4 Q. Okay. And then the one 5 exception, entry 2203, from August 2nd, 6 2006, the e-mail was described as 7 attorney/client communication regarding 8 Congoleum's corporate history and 9 availability of such documents. Do you 10 see that? 11 A. Yes. 12 Q. And generally speaking, as of 13 August 2nd, 2006, do you recall there 14 being any issue about availability of 15 documents? 16 A. I think they asked if documents 17 were available. We provided them what we 18 had. 19 Q. Would you have provided your 20 outside counsel the 1986 deal documents? 21 MR. WEBER: Objection to form. 22 A. I think I made them available. 23 I think that e-mail that said index of 24 binder said here's what we got. 25 Q. Okay. I am going to hand you</p>	<p style="text-align: right;">Page 120</p> <p>1 probably shouldn't even try to speculate 2 on it. 3 Q. Okay. Let's put that aside 4 then. So are you saying that you're not 5 going to speculate because it would 6 disclose attorney/client communications? 7 A. Right. I mean, I can tell you 8 that I recognize that some of these 9 entities listed in the attachments were 10 subsidiaries of 1986 Congoleum and some 11 were not. Somebody obviously had an 12 interest in knowing who they were. 13 Q. Let's go back to Exhibit 11, 14 which is that privilege log, please. And 15 if you go to page 6 of 9 of the document. 16 Just to advance us forward, 2257, the 17 middle of the page, from August 4th, 18 2006, e-mail subject, a letter, a bunch 19 of attorneys there, and you're copied on 20 it. And it's described as an 21 attorney/client communication regarding 22 Congoleum's corporate history. 23 And then the next one, the 24 bottom of this page, is 2393. From 25 August 9th, 2006. The subject is</p>
<p style="text-align: right;">Page 119</p> <p>1 what we are marking as Feist Exhibit 13. 2 (Feist Exhibit 13, Document 3 bearing Bates number CONG_0220713, was 4 so marked for identification, as of 5 this date.) 6 Q. Exhibit 13, Mr. Feist, is an 7 e-mail from Russell Hewit to somebody at 8 Covington, as well as you. Do you see 9 that at the top of the e-mail? 10 A. Yes. 11 Q. And the communications are 12 redacted. The subject is Congoleum 13 Corporation subsidiaries. And then there 14 is a list of attachments, okay? And if 15 you flip to the attachments, there is 16 various, what to me looked like printouts 17 of State of Delaware, inquiries of 18 entities incorporated in the State of 19 Delaware. Does that seem right to you? 20 A. Yes. 21 Q. And generally speaking, do you 22 have an understanding of what you all 23 were looking at these for at the time? 24 A. I guess they were trying to -- 25 I don't know. It's redacted, so I</p>	<p style="text-align: right;">Page 121</p> <p>1 Congoleum. The e-mail is from Russell 2 Hewit to you and several other attorneys. 3 And it's described as attorney/client 4 communication concerning settlement talks 5 with Century concerning corporate 6 history. Do you see that? 7 A. Yes. 8 Q. And can you tell me what you 9 recall about settlement talks with 10 Century regarding Congoleum's corporate 11 history? 12 MR. WEBER: Sorry, again, can I 13 have the question read back, please. 14 (Record read.) 15 MR. WEBER: I'm sorry, I think 16 that one includes information 17 protected by the confidentiality 18 order. 19 Q. Are you taking your attorney's 20 advice and refusing to disclose the 21 content of those discussions? 22 A. I don't recall them 23 specifically, so... 24 Q. Would reviewing these e-mails 25 concerning the corporate history in 2006,</p>

<p style="text-align: right;">Page 122</p> <p>1 when you were negotiating the settlement 2 with Century, would those e-mails help 3 refresh your recollection as to the 4 parties' discussions concerning 5 settlement talks in Congoleum's corporate 6 history?</p> <p>7 A. They would. But they might 8 still be attorney/client privilege or 9 negotiation. Without seeing them, I 10 don't know what they are going to say or 11 what the rules might be for them.</p> <p>12 Q. I appreciate that. Do you 13 think the communications between Century 14 and Congoleum in 2006, whether it was 15 e-mail communications or oral 16 communications, do you think knowing what 17 those communications were would shed 18 light on the context of actual 19 settlement?</p> <p>20 MR. WEBER: Objection to form. 21 THE WITNESS: I'm sorry, repeat 22 that question, please? (Record read.) 24 MR. WEBER: Just note my 25 objection.</p>	<p style="text-align: right;">Page 124</p> <p>1 communications in some time, correct? 2 A. If I saw them -- I don't recall 3 the communications specifically. If I 4 saw them, then I could try to make a 5 conclusion about that.</p> <p>6 Q. Let's look at entry 2483, which 7 is on page 7 of 9, please. It's in the 8 middle of the page there. So now we're 9 at August 17th, 2006. And again, an 10 e-mail from you to Russell Hewit and 11 other attorneys for Congoleum. And it's 12 described as attorney/client 13 communication regarding Congoleum 14 corporate history. Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. And is it fair to say, 17 Mr. Feist, we looked at at least over a 18 dozen or about a dozen entries in August 19 2006, prior to your submission of the 20 declaration, concerning corporate 21 history, is it fair to say that through 22 those communications you came to feel 23 comfortable with the representation to 24 the Bankruptcy Court that Congoleum was 25 the successor to Congoleum-Nairn?</p>
<p style="text-align: right;">Page 123</p> <p>1 A. I'm not sure I understand the 2 context -- I'm not sure I understand the 3 question.</p> <p>4 Q. If I wanted to understand, oh, 5 here's a deal between Congoleum and 6 Century, right, the months of 7 negotiations, right, knowing what was 8 said back and forth, that would be 9 helpful to knowing what the deal was, 10 right?</p> <p>11 MR. WEBER: Objection to form. 12 A. I think the deal is the 13 contract -- the settlement agreement is 14 the deal.</p> <p>15 Q. Of course it is. Is it your 16 testimony under oath today, Mr. Feist, 17 that knowing the communications that went 18 back and forth between Century and 19 Congoleum leading up to the deal wouldn't 20 shed light on what the intent of the deal 21 is, is that your testimony?</p> <p>22 MR. WEBER: Objection to form. 23 A. I don't know. 24 Q. And you don't know, in part, 25 because you haven't seen these</p>	<p style="text-align: right;">Page 125</p> <p>1 MR. WEBER: Objection to form. 2 THE WITNESS: Could you repeat 3 the question. (Record read.) 5 A. I was comfortable that what I 6 stated in my declaration was correct. 7 Q. And so in August 2006, when you 8 submitted your declaration to the 9 Bankruptcy Court concerning the 10 settlement between Congoleum and Century, 11 there were several revisions or drafts of 12 that declaration, correct?</p> <p>13 A. Yes.</p> <p>14 Q. And there was also several 15 drafts of the settlement agreement which 16 you were privy to, correct?</p> <p>17 A. Yes.</p> <p>18 Q. And those draft settlement 19 agreements, fair to say those would shed 20 light on the intents of the parties 21 concerning what was settled and 22 ultimately agreed upon, correct?</p> <p>23 MR. WEBER: Objection to form. 24 A. It would shed light on the 25 wishes of the parties and the</p>

<p>1 compromises. The intent maybe, who 2 knows.</p> <p>3 Q. Do you recall how many drafts 4 of your declaration there were in August 5 2006?</p> <p>6 A. No.</p> <p>7 Q. Do you remember who was 8 involved in reviewing -- let me put it 9 this way. Who actually drafted your 10 declaration in August of 2006?</p> <p>11 A. It's like who drafts the New 12 York Times. I think the coordinator was 13 probably Erica Carrig at Pillsbury, a 14 junior. And Pillsbury submitted the 15 stuff, so they kind of controlled the 16 document. But I remember everybody 17 waited on it.</p> <p>18 Q. Okay. Let's look at some of 19 the entries and make sure I know who some 20 of these names are.</p> <p>21 If you look at the bottom of 22 page 7 of 9 of Feist Exhibit 11, so if 23 you start with fourth from the bottom, 24 entry 2486, August 18th, 2006, do you see 25 that, draft declaration to support</p>	<p>Page 126</p> <p>1 communication regarding draft Feist 2 declaration in support of Century 3 settlement.</p> <p>4 Kerry Brennan, who you were 5 thinking about or is this somebody 6 different?</p> <p>7 A. No, it's somebody different.</p> <p>8 Q. Okay. And do you recall Kerry 9 Brennan's role in your draft declaration?</p> <p>10 A. I mean, she was Richard's 11 partner and was very active in the case.</p> <p>12 Q. Okay. If you flip the page, 13 please. So now we're on page 8 of 9 of 14 Feist Exhibit 11. The first entry there 15 is 2490 from the same date. e-mail 16 subject is Feist declaration/settlement. 17 And now, Kerry Brennan of Pillsbury is 18 sending it to a much broader audience 19 including Covington attorneys Russ Hewit, 20 and there is Erica Carrig in the c.c. 21 group.</p> <p>22 A. Mm-mmm.</p> <p>23 Q. Attorney/client communication 24 regarding draft Feist declaration, 25 support of motion for approval of Century</p>
<p>1 Century settlement?</p> <p>2 A. Yes.</p> <p>3 Q. And Richard Epling from 4 Pillsbury sends it to you. And it's 5 described as attorney/client 6 communication regarding draft Feist 7 declaration in support of Century's 8 settlement. Do you see that?</p> <p>9 A. Mm-mmm.</p> <p>10 Q. That's consistent with your 11 recollection that at least the first 12 mention of it we see, at least on this 13 log, is coming from Pillsbury, is that 14 consistent with your recollection?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. The next entry of 2487, 17 right below it, appears to be just the 18 attachment work product regarding draft 19 declaration. Below that entry 2488 from 20 August 18th, again it's described as 21 Feist declaration in support of Century 22 settlement. This time you send it to 23 Kerry Brennan at Pillsbury with a copy to 24 Mr. Epling at Pillsbury, and it's 25 described as attorney/client</p>	<p>Page 127</p> <p>1 settlement is the description. And do 2 you recall what, if any, the role of 3 Covington's attorneys would have been in 4 your draft declaration?</p> <p>5 A. To review it from a coverage 6 standpoint.</p> <p>7 Q. And the same question with 8 Mr. Russell Hewit, do you recall what his 9 role would have been in regards to your 10 declaration?</p> <p>11 A. It would also have been 12 coverage and, you know, Russ was familiar 13 with the corporate history to the extent 14 anybody is.</p> <p>15 Q. I won't go through them. But 16 then the next entry is at 2492, further 17 e-mails on August 18th, and then 2494, 18 further e-mails concerning draft Feist 19 declaration.</p> <p>20 If you go down to the next 21 page, page 9 of 9 of Exhibit 11, at the 22 very top, the entry is 2512, is now 23 September 15th of 2006. And the subject 24 is revised Feist draft. And then there 25 is entry 2514, there is further e-mail</p>

<p style="text-align: right;">Page 130</p> <p>1 concerning Feist affidavit. And finally 2 2515, September 15th, there is an e-mail, 3 subject, final version of Feist 4 declaration. Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. And is that generally 7 consistent with your recollection, 8 Mr. Feist, that there were at least, over 9 approximately a little less than a month, 10 there were, you know, six or seven 11 e-mails concerning your draft affidavit. 12 Does that sound right to you?</p> <p>13 A. That sounds reasonable.</p> <p>14 MR. WEBER: I don't want to give 15 a speaking objection, but I think 16 you -- are you talking about the 17 Century affidavit or are you talking 18 about a different affidavit? Sorry.</p> <p>19 MR. THOMSON: That's okay.</p> <p>20 MR. WEBER: Not my practice to 21 do speaking objections.</p> <p>22 MR. THOMSON: It's a fair 23 clarification.</p> <p>24 Q. And let's go back to 25 Mr. Weber's point. In the August 2006</p>	<p style="text-align: right;">Page 132</p> <p>1 THE VIDEOGRAPHER: We are back 2 on the record. The time on the video 3 monitor is 11:18 a.m. This starts 4 media 3. (Feist Exhibit 14, Notice of motion in Bankruptcy Court for approval of settlement and buyback agreement, was so marked for identification, as of this date.)</p> <p>10 Q. Mr. Feist, we have been talking 11 a lot about your August 21st, 2006 12 declaration. I am handing you Exhibit 13 14, and that contains a motion in the 14 Bankruptcy Court for approval of the 15 settlement and buyback agreement and 16 releases between Congoleum, the Congoleum 17 entities and the Century entities, as it 18 states on the first page. Do you see 19 that?</p> <p>20 A. Yes.</p> <p>21 Q. And that's the notice of that 22 motion. And I will represent to you that 23 behind the notice, document, or Exhibit 24 14 contains the motion submitted by 25 Congoleum and some of the exhibits,</p>
<p style="text-align: right;">Page 131</p> <p>1 e-mails we went through concerning the 2 Feist declaration that specifically say 3 they are related to the Century 4 settlement, right? So if you look at 5 entry 2494, for example, on page 8 of 9, 6 kind of a third down there, you see that 7 from August 18th, 2006?</p> <p>8 A. Yes.</p> <p>9 Q. So some of those attorneys, 10 right, those are some of the same 11 attorneys, Mr. Dolin from Covington, 12 et cetera, those are some of the same 13 attorneys that you were having e-mail 14 exchanges with concerning Congoleum's 15 corporate history, correct?</p> <p>16 A. Yes.</p> <p>17 MR. THOMSON: This is a good 18 stopping point. Could we go off the 19 record for a couple of minutes and 20 talk at least.</p> <p>21 THE VIDEOGRAPHER: The time on 22 the video monitor is 11:05 a.m., we 23 are off the record. This ends media 24 2.</p> <p>25 (Off the record.)</p>	<p style="text-align: right;">Page 133</p> <p>1 including Exhibit A, which is the 2 settlement agreement itself, and Exhibit 3 B, which was your declaration, okay. And 4 we will get to all three of those in 5 turn.</p> <p>6 Focusing first on the motion, 7 and the best way to do this, Mr. Feist, 8 at the top of the page, it says page 1 of 9 27. If you go two pages back. You're on 10 the notice right now. I apologize. So 11 there is the --</p> <p>12 A. Got it.</p> <p>13 Q. So the motion is 1 of 27. Do 14 you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. If you could look to 17 page 4 of 27, please, paragraph 8. First 18 off, you know that the motion for this 19 approval of the settlement agreement, 20 that was filed by attorneys for 21 Congoleum?</p> <p>22 A. Yes.</p> <p>23 Q. And it's dated August 21st, 24 2006. Paragraph 8 on page 4 of the 25 motion states "Congoleum and the Century</p>

<p style="text-align: right;">Page 134</p> <p>1 Entities dispute whether and to what 2 extent a subject policies afford coverage 3 for: (i) all asbestos claims that may be 4 subject to the Claimant Agreement; (ii) 5 all other asbestos claims; and (iii) all 6 non asbestos-related claims such as 7 environmental and other general liability 8 claims (the 'Coverage Dispute')."</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. So as defined in the motion, 12 the coverage dispute recognizes that some 13 of the disputes between Congoleum and 14 Century included environmental claims, 15 right?</p> <p>16 A. Yes.</p> <p>17 Q. And if you can flip over to -- 18 well, before I get to a different 19 document. Century's position, the reason 20 it was willing to, it would have only 21 done -- let me start over in English. 22 Do you recall that Century's 23 position was it only would have entered 24 this settlement with Congoleum if Century 25 would be protected against future claims</p>	<p style="text-align: right;">Page 136</p> <p>1 assistant vice principal and president 2 with Resolute Management. 3 And you understood Resolute at 4 that time was working, representing 5 Century in regards to its insurance 6 coverage?</p> <p>7 A. Yes.</p> <p>8 Q. And if you flip to page 4 of 11 9 here, paragraph 7, she writes "As a 10 condition of the Settlement and Buyback 11 Agreement, Century will pay the 12 settlement and buyback amount only if it 13 can have certainty that the Century 14 Entities will be released from and have 15 injunctive protection against all claims, 16 including non-asbestos claims."</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. And so you understood that was 20 part of the settlement agreement, right?</p> <p>21 A. I would defer to the settlement 22 agreement.</p> <p>23 Q. Let me strike that. You 24 understand that Century's representation 25 to the Court as part of seeking approval</p>
<p style="text-align: right;">Page 135</p> <p>1 for both asbestos and non-asbestos 2 claims?</p> <p>3 MR. WEBER: Objection to form. 4 You can answer.</p> <p>5 A. I am not following the 6 question. Can you repeat it?</p> <p>7 Q. Yeah. So let me get a document 8 to make it easier. 9 (Feist Exhibit 15, Document 10 bearing Bates number BATH000036, was 11 so marked for identification, as of 12 this date.)</p> <p>13 Q. So Exhibit 15, this is a 14 declaration in support of Congoleum's 15 motion for the approval of the settlement 16 between Congoleum and Century, right?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And this is filed just 19 two days later, from your declaration 20 this one is filed on August 23rd, 2006, 21 right?</p> <p>22 A. Yes.</p> <p>23 Q. And if you go over to the 24 second page of this document, Maria 25 Matteo Thompson identifies herself as</p>	<p style="text-align: right;">Page 137</p> <p>1 of the settlement was the representation 2 that I just made to you, right?</p> <p>3 MR. WEBER: Objection to form. 4 A. Yes.</p> <p>5 Q. Let's go back to the larger 6 exhibit, Exhibit 14, please. And if we 7 could look at paragraph 10 on page 4, 4.7 8 from the motion filed by Congoleum. 9 Paragraph 10 says "The parties engaged in 10 lengthy and comprehensive negotiations 11 regarding the terms of the Settlement 12 Transactions, and the Settlement and 13 Buyback Agreement represents an 14 arm's-length compromise on the issues of 15 all parties thereto. See declaration of 16 Howard N. Feist, III attached as Exhibit 17 B."</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Did you have a general 21 understanding as to why it was necessary 22 for you to submit a declaration in 23 support of the motion that Congoleum was 24 filing for approval of the settlement 25 with Century?</p>

<p style="text-align: right;">Page 138</p> <p>1 A. I think generally any facts 2 that were in a motion had to be supported 3 by declarations from the company. I have 4 signed a ton of these.</p> <p>5 Q. If you look at the next page 6 here, paragraph 13, and this is all under 7 the heading of, paragraph 12 and 13 are 8 under the heading of "Settlement and 9 Buyback Agreement."</p> <p>10 The first sentence of paragraph 11 13, says "Pursuant to the Approval Order 12 attached to the Settlement and Buyback 13 Agreement as Exhibit A, the Settlement 14 and Buyback Agreement is to be 15 implemented, in part, through the sale of 16 the subject policies to Century, pursuant 17 to Section 363(b) of the Bankruptcy 18 Code."</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. And I am certainly not asking 22 for a legal opinion, Mr. Feist, but do 23 you have a general understanding as to 24 what that meant?</p> <p>25 MR. WEBER: Object to the form.</p>	<p style="text-align: right;">Page 140</p> <p>1 understood that as a result of the 2 settlement being entered by the 3 Bankruptcy Court, all persons and 4 entities who might try to bring claims 5 against Century relating to the policy 6 were enjoined from doing so, correct?</p> <p>7 MR. WEBER: Objection to form.</p> <p>8 A. I mean, I need to trace back 9 all of the definitions.</p> <p>10 Q. Okay. I don't want you to do 11 that, okay. That will take a long time, 12 all right?</p> <p>13 A. Okay.</p> <p>14 Q. But generally speaking, did you 15 understand that that's the deal with a 16 buyback, that Century wanted and Century 17 got, through the settlement, that nobody 18 could use the policies, could sue under 19 the policies going forward after this 20 settlement?</p> <p>21 A. No, my understanding is Century 22 got the liabilities resulting from 23 Congoleum's rights under those policies 24 people couldn't sue Century for. But I 25 don't believe rights of others under</p>
<p style="text-align: right;">Page 139</p> <p>1 You can answer.</p> <p>2 A. Again, I would go back to, we 3 were selling back our rights and the 4 Bankruptcy Code has got provisions for 5 approving sales like that.</p> <p>6 Q. And let's jump over to 7 paragraph 14. The next page, page 6 of 8 27, "The Approval Order also provides 9 that effective upon the first payment 10 date but subject to the satisfaction of 11 the conditions precedent to the trigger 12 date, pursuant to Sections 105(a) and 13 306(b) and (f) of the Bankruptcy Code, 14 all persons and entities who have 15 asserted or who might subsequently 16 assert, claims, including asbestos 17 claims, against the Century Entities 18 relating to or arising out of the subject 19 policies, shall be forever enjoined, 20 barred and estopped from asserting any 21 such claims," et cetera, et cetera.</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. And fair to say that as 25 represented here in the order, you</p>	<p style="text-align: right;">Page 141</p> <p>1 those policies would be affected.</p> <p>2 Q. And what is that understanding 3 based upon?</p> <p>4 A. It was in my declaration.</p> <p>5 Q. The one from 2006 that we're 6 going to look at?</p> <p>7 A. Yeah.</p> <p>8 Q. Did you have discussions about 9 that understanding of the settlement 10 agreement with Century?</p> <p>11 MR. WEBER: Objection.</p> <p>12 Just an instruction, you can 13 answer that yes or no.</p> <p>14 A. I didn't negotiate directly 15 with Century. It was all through the 16 lawyers.</p> <p>17 Q. Are you aware of whether there 18 were discussions about that aspect of 19 your understanding between Century and 20 Congoleum?</p> <p>21 MR. WEBER: Just yes or no.</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And do you know who 24 would have had those conversations with 25 Century concerning that issue in the</p>

<p>1 which is the Settlement and Buyback 2 Agreement. It's on page 2 of 3 of the 3 filing, the term is settlement of policy 4 buyback agreement and release. Do you 5 see that?</p> <p>6 A. Yes.</p> <p>7 Q. And just if you go to the last 8 page -- well, I'm sorry, it's not the 9 last page, because there are exhibits to 10 this too. If you go to page 31 -- 32 of 11 63. That's your signature on behalf of 12 Congoleum Corporation on August 17th, 13 2006?</p> <p>14 A. Yes.</p> <p>15 Q. So let's go on page 6 of 63, 16 under the definitions.</p> <p>17 MR. WEBER: Using the top 18 numbers?</p> <p>19 MR. THOMSON: Yes, 6 of 63, so 20 page 5 on the bottom.</p> <p>21 Q. So the definition K, for 22 Congoleum entities, right, it says means, 23 and then it lists almost 13 different 24 groups. And the first groups were the 25 debtors. And that included Congoleum</p>	<p>Page 150</p> <p>1 numerals number 8 there, a couple of 2 lines down, also defined as Congoleum 3 entities are "The direct or indirect 4 predecessors, successors and assigns of 5 each of the foregoing persons in their 6 capacities as such and to the full 7 extent, but only to the extent that the 8 debtors have power and authority to give 9 the releases set forth in Section 6 on 10 their behalf."</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Did you have any involvement in 14 drafting of that definition?</p> <p>15 A. I mean, it was drafted by the 16 lawyers. I obviously reviewed it.</p> <p>17 Q. Do you recall how that, kind of 18 why this definition is in the settlement 19 agreement?</p> <p>20 MR. WEBER: Objection to form.</p> <p>21 You can answer.</p> <p>22 A. No, I mean these are 23 complicated documents that had a lot of 24 wordsmithing done.</p> <p>25 Q. Do you know whether Century</p>
<p>1 Corporation at the time, correct?</p> <p>2 A. I'm sorry?</p> <p>3 Q. You understood that the 4 debtors --</p> <p>5 A. Was Congoleum Corporation, yes.</p> <p>6 Q. Right. Number 5, if you read 7 down a little, a couple of lines, 8 included the entity Congoleum-Nairn Inc. 9 named in the policies and then it lists a 10 bunch of policies and then at the very 11 last line of that page also lists the 12 entity Bath Industries, Inc. named in 13 several policies. Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. And then reading over to the 16 next page, the second, end of the second 17 to the top line says "To the full extent, 18 but only to the extent such entities 19 conducted, managed, operated or were in 20 any way involved in the Congoleum 21 Flooring Business."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. And the last one I will point 25 to, if you go down to number 8, Roman</p>	<p>Page 151</p> <p>1 asked for this definition to include all 2 of these different parties?</p> <p>3 MR. WEBER: Objection to form.</p> <p>4 I will direct the witness not to 5 answer.</p> <p>6 Q. Are you going to accept your 7 attorney's --</p> <p>8 A. I don't know. I mean I don't 9 know the answer to your question. Not 10 that I don't know if I am going to accept 11 his advice.</p> <p>12 Q. Understood. Fair to say you 13 recall any discussions about why this 14 definition contains the entities it does?</p> <p>15 MR. WEBER: Just a yes or no.</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And are you refusing to 18 disclose the content of those discussions 19 per your attorney's instructions?</p> <p>20 MR. WEBER: Well, now your 21 question includes both his own 22 attorneys and communications with 23 Century's. You might want to clarify.</p> <p>24 Q. You said you recall some 25 discussions concerning which entities are</p>

<p style="text-align: right;">Page 166</p> <p>1 Q. Besides what you just stated, 2 do you know what individuals, if any, 3 would have been the ones to have put this 4 general concept that you're talking into 5 the negotiations between Congoleum and 6 Century when they were negotiating the 7 settlement in 2006?</p> <p>8 MR. WEBER: Object to the form. 9 Well, I'm not sure I understood the 10 question, but if you understood it, 11 you can answer.</p> <p>12 A. It wasn't really a negotiation. 13 There was drafting to be done that had 14 to, you know, had to make that happen. 15 And that's what they were trying to do. 16 And it's obviously a challenge for a 17 draftsperson.</p> <p>18 But I mean we didn't negotiate, 19 if you give us a little more money we 20 will sell Bath's rights under the policy.</p> <p>21 Q. Just to be clear, the 22 settlement discussions represented in the 23 motion, it went on for years though, 24 right? So when you say it wasn't much of 25 a negotiation, I am just trying to</p>	<p style="text-align: right;">Page 168</p> <p>1 through them, several different entities, 2 and then second to last line "Bath Iron 3 Works Corp. have no responsibility for 4 any of the liabilities of the Congoleum 5 Flooring Business."</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And fair to say that the 9 issue of whether Bath Iron Works had 10 responsibility for any of the liabilities 11 of the Congoleum Flooring Business was 12 one of the issues negotiated between 13 Century and Congoleum in 2006, right?</p> <p>14 MR. WEBER: Objection to form.</p> <p>15 A. No.</p> <p>16 Q. It was not one of the issues 17 that was part of the settlement 18 negotiations between Century and 19 Congoleum?</p> <p>20 A. I don't think so. Why would it 21 be?</p> <p>22 Q. Why would it be included in 23 this representation?</p> <p>24 A. Only because we had to 25 delineate between the insurance rights of</p>
<p style="text-align: right;">Page 167</p> <p>1 understand, are you saying in general?</p> <p>2 A. I am saying this definition.</p> <p>3 Q. I got it. Okay. Understood.</p> <p>4 But to be clear, if we wanted to find out 5 whether this issue, iterations of this 6 definition, for example, what went in, 7 what people's wishes were and compromises 8 were, those would be in the drafts that 9 were exchanged between Century and 10 Congoleum, correct?</p> <p>11 A. Without looking -- I don't know 12 whether it was discussed with the 13 attorneys. I'm not sure what you would 14 find in there.</p> <p>15 Q. But if we had a question about 16 what this stuff meant and we wanted to 17 see what people were bargaining for, 18 right, those drafts and those 19 communications we were talking about 20 between Congoleum and Century, that's 21 what would shed light on it, right?</p> <p>22 MR. WEBER: Objection to form.</p> <p>23 Q. So let's look at rep I, please, 24 on page 25 of 63. The debtors represent 25 and warrant that, I am not going to read</p>	<p style="text-align: right;">Page 169</p> <p>1 Congoleum and the insurance rights of 2 others.</p> <p>3 Q. Where does it say anything 4 about insurance rights in rep I for 5 Congoleum?</p> <p>6 A. Because the liabilities give 7 rise to the insurance rights. So you 8 can't say that you're entitled to the 9 insurance without also saying that the 10 other potentially insured party is not 11 liable.</p> <p>12 Q. Right. So once you say, if you 13 say you're entitled to certain insurance, 14 you're also acknowledging that you're 15 entitled, that you're responsible for the 16 liability for which you're getting a 17 coverage, right?</p> <p>18 MR. WEBER: Objection to form.</p> <p>19 A. Yes.</p> <p>20 Q. With regard to rep and warranty 21 I, do you recall any specific discussions 22 concerning that rep?</p> <p>23 A. No.</p> <p>24 Q. Lets look at rep K here. Let's 25 go back to I actually for one second. So</p>

<p style="text-align: right;">Page 170</p> <p>1 that last line, so Congoleum's 2 representing and warranting that Bath 3 Corp. has no responsibility for any of 4 the liabilities of the Congoleum Flooring 5 Business, right? And as we saw from the 6 motion, one of the contested liabilities 7 between Century and Congoleum related to 8 environmental liabilities, correct?</p> <p>9 A. Correct.</p> <p>10 Q. And so in making the rep and 11 warranty I, Congoleum was stating that 12 Bath Iron Works Corp. had no 13 responsibility for those liabilities, 14 those environmental liabilities as well, 15 right?</p> <p>16 MR. WEBER: Objection to form.</p> <p>17 A. If they were liabilities of the 18 Congoleum Flooring Business.</p> <p>19 Q. Okay. So that's a yes, if they 20 were liabilities of the Congoleum 21 Flooring Business and they were 22 environmental, those would be included in 23 this rep I, correct?</p> <p>24 A. Yes.</p> <p>25 Q. Let's look at rep K, please.</p>	<p style="text-align: right;">Page 172</p> <p>1 Q. I don't want to dwell on it, 2 but the definition we had looked at on 3 page 7 of 13, when it discussed the 4 Congoleum Flooring Business rep or 5 definition, that one, you know, much of 6 this is very similar to that last part of 7 that definition L on page 7 of 63, 8 Mr. Feist. But that one refers to the 9 business as being headquartered. This 10 one is a representation about the 11 flooring operations of the Congoleum 12 entities. And I am just curious if you 13 knew why the definitions were slightly 14 different?</p> <p>15 A. They are worded differently. I 16 don't think they are saying anything 17 differently. They say headquartered in 18 Kearny.</p> <p>19 Q. Rep K talks about the flooring 20 operations of the Congoleum entities, the 21 definition we previously looked at, that 22 goes back to include the predecessors of 23 Congoleum were headquartered in Kearny?</p> <p>24 A. I don't know why there is a 25 difference.</p>
<p style="text-align: right;">Page 171</p> <p>1 "The debtors represent and warrant that 2 the flooring operations of the Congoleum 3 entities to which they succeeded included 4 the manufacture, sale, distribution, 5 installation, formulation, marketing, 6 transport, handling or any other activity 7 involving in any way flooring, vinyl 8 sheeting, flooring or floor tile products 9 of any kind were headquartered in Kearny, 10 New Jersey continuously from before 1965 11 to 1987."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. I just want to ask you, well, 15 first, do you recall any discussions you 16 had concerning that specific rep and 17 warranty, Mr. Feist?</p> <p>18 A. No.</p> <p>19 Q. Do you recall if you were 20 involved in the actual drafting of that?</p> <p>21 A. I was not.</p> <p>22 Q. Do you know who would have 23 been?</p> <p>24 A. Could have been -- it was 25 probably a coverage lawyer.</p>	<p style="text-align: right;">Page 173</p> <p>1 Q. Okay. Can you just flip the 2 page once to page 26 of page 63 very 3 quickly, under section 13, where it says 4 "Entire agreement and term." Do you see 5 that?</p> <p>6 A. Yes.</p> <p>7 Q. And about the third sentence 8 down, it says "If the facts or law 9 related to the subject matter of this 10 Settlement and Buyback Agreement are 11 found hereafter to be other than is now 12 believed by any of the parties, the 13 parties expressly accept and assume the 14 risk of such possible difference of fact 15 or law and agree that this Settlement and 16 Buyback Agreement nonetheless shall be 17 and remain effective according to its 18 terms."</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Do you recall how that 22 provision became a part of the settlement 23 agreement?</p> <p>24 A. No.</p> <p>25 Q. You don't recall any specific</p>

<p>1 discussions concerning that?</p> <p>2 A. Nope.</p> <p>3 Q. Okay. But you understood even</p> <p>4 if Congoleum was wrong about a factual</p> <p>5 statement that was made in this</p> <p>6 settlement, it was required to live by</p> <p>7 it, right?</p> <p>8 MR. WEBER: Objection to form.</p> <p>9 You can answer.</p> <p>10 A. I didn't think about it.</p> <p>11 Q. As I just read that sentence,</p> <p>12 does that make sense to you as a</p> <p>13 layperson, as a sophisticated</p> <p>14 businessman?</p> <p>15 A. Yes.</p> <p>16 Q. Let's flip a couple of pages</p> <p>17 back to your declaration. And that's</p> <p>18 going to be, you've got to go all the way</p> <p>19 past the 63 pages, so right after 63 of</p> <p>20 63, the next page should be Exhibit B of</p> <p>21 your declaration. Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Just for formality's sake, the</p> <p>24 last page, that's your signature there,</p> <p>25 correct?</p>	<p>Page 174</p> <p>1 And they reflect true compromise by all</p> <p>2 the parties thereto, including the FRC</p> <p>3 and the ACC," right?</p> <p>4 A. Yes.</p> <p>5 Q. And then let's jump over to the</p> <p>6 next page, paragraph 14 on page 6. Do</p> <p>7 you see that?</p> <p>8 A. Mm-mmm.</p> <p>9 Q. So it reads "Based upon a</p> <p>10 review of the documents in Congoleum's</p> <p>11 possession, I understand the following."</p> <p>12 And so my first question,</p> <p>13 Mr. Feist, is what documents did you</p> <p>14 review to provide the following</p> <p>15 representations in your declaration?</p> <p>16 A. I don't remember reviewing</p> <p>17 specific documents. It was documents</p> <p>18 that I would have reviewed over time.</p> <p>19 Q. And at that time you still had</p> <p>20 available to you the 1986 transaction</p> <p>21 documents?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And so to be clear, in</p> <p>24 August 2006, when you filed this</p> <p>25 agreement, did you look, at that time, at</p>
<p>1 A. Sorry, what page is that?</p> <p>2 Q. I will just use the bottom</p> <p>3 pages for this one. Page 7.</p> <p>4 A. Yes.</p> <p>5 Q. So the seven-page declaration</p> <p>6 you submitted in support of Congoleum's</p> <p>7 motion of approval of the</p> <p>8 Century/Congoleum settlement, right?</p> <p>9 A. Yes.</p> <p>10 Q. And on page 1, it starts off</p> <p>11 "I, Howard N. Feist, III, being of full</p> <p>12 age, do hereby certifies as follows."</p> <p>13 A. Yes.</p> <p>14 Q. You understand you were</p> <p>15 certifying the accuracy of your</p> <p>16 statements to the Bankruptcy Court?</p> <p>17 A. I did.</p> <p>18 Q. So you understood you were in</p> <p>19 essence under oath, right?</p> <p>20 A. Yes.</p> <p>21 Q. Let's jump forward to paragraph</p> <p>22 8, which is on page 5 here. So "The</p> <p>23 terms of the settlement and buyback are</p> <p>24 the product of extensive and</p> <p>25 comprehensive arm's-length negotiations.</p>	<p>Page 175</p> <p>1 the 1986 transaction documents?</p> <p>2 A. I don't remember. I may have.</p> <p>3 I mean, I was familiar with them. I</p> <p>4 might not have needed to look at them</p> <p>5 again.</p> <p>6 Q. And sitting here today, can you</p> <p>7 identify any specific document that you</p> <p>8 would have reviewed at the time?</p> <p>9 A. I may have gone through a list</p> <p>10 of, you know, a list of the insurance</p> <p>11 policies. I don't remember specifically.</p> <p>12 Q. Do you know if your attorneys,</p> <p>13 any of the outside attorneys for</p> <p>14 Congoleum reviewed the 1986 transaction</p> <p>15 documents at the time?</p> <p>16 A. I don't.</p> <p>17 Q. And did you think you were</p> <p>18 missing any important documents that you</p> <p>19 needed at the time?</p> <p>20 A. No.</p> <p>21 Q. And do you recall around this</p> <p>22 time that people were looking for certain</p> <p>23 transaction documents relating to</p> <p>24 Congoleum in the 1986 era?</p> <p>25 A. You mean from e-mails on the</p>

<p>1 privilege log?</p> <p>2 Q. Or generally. Do you recall</p> <p>3 that?</p> <p>4 A. I mean, from e-mail traffic,</p> <p>5 obviously the names of these entities,</p> <p>6 that had to be understood to draft this.</p> <p>7 Q. Do you recall that Don Golemme</p> <p>8 affirmatively said to you and the outside</p> <p>9 attorneys of Congoleum, that Congoleum</p> <p>10 would not be contacting Bath Iron Works</p> <p>11 about historical files?</p> <p>12 A. I don't remember that.</p> <p>13 Q. Handing you what I am marking</p> <p>14 as Feist Exhibit 17.</p> <p>15 (Feist Exhibit 17, Document</p> <p>16 bearing Bates number CONG_0098647, was</p> <p>17 so marked for identification, as of</p> <p>18 this date.)</p> <p>19 Q. So let's start from the last</p> <p>20 page of Exhibit 17, Mr. Feist. So the</p> <p>21 first e-mail in the chain from Tuesday,</p> <p>22 September 25th, 2015. So we're about 11</p> <p>23 months before your declaration. And it's</p> <p>24 from Mr. Golemme to someone with the name</p> <p>25 or initials of good@BragarWexler.</p>	<p>Page 178</p> <p>1 on September 28th, "We will not be</p> <p>2 contacting BIW. However, we might</p> <p>3 consider calling Hillside, since they</p> <p>4 might have copies in our 1986 files."</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. And then you say "I called John</p> <p>8 at Hillside, they do not think they have</p> <p>9 a copy of the 1984 agreements but</p> <p>10 Rosemary will check their files"?</p> <p>11 A. Yup.</p> <p>12 Q. And then Don says, "I</p> <p>13 understand in 2000 the Battle Fowler firm</p> <p>14 was merged into Paul Hastings. Do you or</p> <p>15 John have a contact there that might be</p> <p>16 able to locate the 1984 agreements."</p> <p>17 Right?</p> <p>18 A. Right.</p> <p>19 Q. Do you recall if you contacted</p> <p>20 or provided a contact to Mr. Golemme</p> <p>21 concerning those old law firms?</p> <p>22 A. I don't.</p> <p>23 Q. And do you recall ever learning</p> <p>24 why Mr. Golemme, during the bankruptcy</p> <p>25 that could impact the rights of Bath Iron</p>
<p>1 Do you know who that is?</p> <p>2 A. I don't. No.</p> <p>3 Q. And copied as well as you is</p> <p>4 Mr. Hewit, Mr. Feldman, and someone from</p> <p>5 the Dughi Hewit firm. Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. And the subject is Congoleum</p> <p>8 transactions. Mr. Golemme writes "David,</p> <p>9 during January 8, 1988, when you were</p> <p>10 with the Battle Fowler firm, you sent me</p> <p>11 a summary of Congoleum transactions from</p> <p>12 1968 to 1986. We are trying to locate</p> <p>13 the 1984 purchase agreement wherein N&R</p> <p>14 Ventures did an LBO of Congoleum."</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. You respond to Mr. Golemme and</p> <p>18 copy your outside attorneys, you drop</p> <p>19 that other person, on September 28th, and</p> <p>20 you write "Don, You might also want to</p> <p>21 try and contact Bath Iron Works' finance</p> <p>22 or legal departments," right?</p> <p>23 A. Right.</p> <p>24 Q. Don writes back to you, right</p> <p>25 above that, "Skip," he writes back also</p>	<p>Page 179</p> <p>1 Works, said that Congoleum would not be</p> <p>2 contacting Bath Iron Works for historical</p> <p>3 files?</p> <p>4 MR. WEBER: Objection to form.</p> <p>5 A. I don't know why Don decided</p> <p>6 not -- said we're not contacting.</p> <p>7 Q. Let's look back to -- you can</p> <p>8 put that document to the side. Let's</p> <p>9 look back at Feist Exhibit 14. We are</p> <p>10 looking at your declaration on</p> <p>11 August 21st, 2006. We are looking at</p> <p>12 page 7 of 8, paragraph 14, right, we were</p> <p>13 just talking about based on your review</p> <p>14 of documents and then you made several</p> <p>15 representations.</p> <p>16 A. Yes.</p> <p>17 Q. So paragraph -- let's look at</p> <p>18 14A now. If you could read that to</p> <p>19 yourself, please.</p> <p>20 A. You're talking about with</p> <p>21 respect to the Congoleum Flooring</p> <p>22 Business?</p> <p>23 Q. Yes, there is A, B and C. If</p> <p>24 you could just read A and then look up</p> <p>25 when you're done, please.</p>

<p>1 (Witness reviews document.)</p> <p>2 A. Okay.</p> <p>3 Q. In this representation you made</p> <p>4 to the Bankruptcy Court in August of</p> <p>5 2006, Mr. Feist, is a true and accurate</p> <p>6 statement, right?</p> <p>7 A. Yes.</p> <p>8 Q. And do you understand,</p> <p>9 generally, why you had to include this</p> <p>10 statement in your declaration in support</p> <p>11 of Congoleum's motion for approval of the</p> <p>12 settlement?</p> <p>13 A. That would have been advised by</p> <p>14 attorneys.</p> <p>15 Q. And do you recall any specific</p> <p>16 changes that you or other people made to</p> <p>17 this subpart of your declaration, as you</p> <p>18 sit here today?</p> <p>19 A. Yes.</p> <p>20 Q. What do you recall being</p> <p>21 changed?</p> <p>22 A. It was just moving wording of</p> <p>23 the respects to the Congoleum Flooring</p> <p>24 Business to make it clearer, make it so I</p> <p>25 thought it was clearer.</p>	<p>Page 182</p> <p>1 time, right?</p> <p>2 A. Alleged, yeah.</p> <p>3 Q. And do you recall any changes</p> <p>4 to this provision that was made in the</p> <p>5 drafts of your declaration?</p> <p>6 A. No.</p> <p>7 Q. Do you recall any discussions</p> <p>8 about this provision in your declaration?</p> <p>9 A. I do not.</p> <p>10 Q. And finally, if you could just</p> <p>11 read 14C to yourself and let me know when</p> <p>12 you've read it.</p> <p>13 A. Okay.</p> <p>14 Q. And that representation to the</p> <p>15 Bankruptcy Court in the declaration is a</p> <p>16 true and accurate statement, right?</p> <p>17 A. Yes, other than Kearny being</p> <p>18 misspelled.</p> <p>19 Q. Fair point. And the same</p> <p>20 question as before, do you recall making</p> <p>21 any changes to any of the drafts</p> <p>22 concerning this provision?</p> <p>23 A. No.</p> <p>24 Q. Do you recall any discussions</p> <p>25 about the specific provision with anyone?</p>
<p>1 Q. And you recall that? Have you</p> <p>2 seen documents that show that recently or</p> <p>3 you just recall that from that long ago?</p> <p>4 A. I just remember it was part of</p> <p>5 the -- it was something I felt was</p> <p>6 important.</p> <p>7 Q. Do you recall discussions about</p> <p>8 that with anyone?</p> <p>9 A. Not specifically.</p> <p>10 Q. Do you recall where the "with</p> <p>11 respect" was before you asked it to be</p> <p>12 changed?</p> <p>13 A. I don't.</p> <p>14 Q. If you flip the page to 14B.</p> <p>15 If you could just read that to yourself</p> <p>16 and let me know.</p> <p>17 A. Okay.</p> <p>18 Q. And that representation you</p> <p>19 made to the Bankruptcy Court in 2006 in</p> <p>20 your declaration, that's a true and</p> <p>21 accurate statement, correct?</p> <p>22 A. Yes.</p> <p>23 Q. And at the time of this</p> <p>24 declaration in 2006, Congoleum had</p> <p>25 certain environmental liabilities at the</p>	<p>Page 183</p> <p>1 A. No.</p> <p>2 MR. THOMSON: Why don't we go</p> <p>3 off the record, please.</p> <p>4 THE VIDEOGRAPHER: The time on</p> <p>5 the video monitor is 12:17 p.m., we</p> <p>6 are off the record. This ends media</p> <p>7 unit 3.</p> <p>8 (Lunch recess: 12:21 p.m.)</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 186</p> <p>1 Afternoon Session 2 12:57 p.m. 3 H O W A R D N. F E I S T, III, having 4 been previously duly sworn, was examined 5 and testified further as follows: 6 THE VIDEOGRAPHER: We are back 7 on the record. The time on the video 8 monitor is 12:53 p.m., and this starts 9 media unit 4.</p> <p>10 EXAMINATION (Continued) 11 BY MR. THOMSON: 12 Q. Mr. Feist, prior to lunch we 13 were talking about your declaration 14 submitted in the bankruptcy in August of 15 2006. As reflected in Exhibit 1, I will 16 just -- I don't think you need to bring 17 it out, but if you need to, BIW submitted 18 an interrogatory to Congoleum asking to 19 identify all persons who may have 20 knowledge or information related to the 21 representations made by Congoleum as part 22 of the Century settlement motion. 23 And in the interrogatory 8, 24 Congoleum identified you, attorneys at 25 Dughi Hewit, Pillsbury, Okin Hollander</p>	<p style="text-align: right;">Page 188</p> <p>1 Q. Okay. And were you reviewing 2 what was sent to them or approving what 3 was sent to them or anything like that? 4 A. No. I mean normally, you know, 5 I would sign a request, either a letter 6 to an attorney, if it's for a legal 7 letter, if it's a bank balance 8 confirmation, the bank wants to see my 9 signature on it. But I wouldn't normally 10 review the lawyers' work product other 11 than -- I would get a copy, but not -- 12 they wouldn't run it by me first. 13 Q. I am going to hand you what we 14 will mark as Feist Exhibit 18. 15 (Feist Exhibit 18, Document 16 bearing Bates number CONG_0047592, was 17 so marked for identification, as of 18 this date.) 19 Q. So this Exhibit 18 is a letter 20 dated March 14th, 2007 from the law firm 21 of Dughi Hewit to Ernst & Young. And in 22 the first paragraph it says "This is in 23 response to your request of February 1st, 24 2007 that we provide you with certain 25 information in connection with your audit</p>
<p style="text-align: right;">Page 187</p> <p>1 and Covington, the only non-attorney 2 identified other than you was Roger 3 Marcus, former chief executive officer 4 for Congoleum. I'm just curious what his 5 involvement would have been in the 6 Century settlement. 7 A. I think he would have had 8 minimal. Roger was involved kind of at a 9 strategic level and maybe the total 10 dollar amount. But beyond that, he 11 didn't really get involved in the 12 details. 13 Q. So you don't think he would 14 have been involved in the details of the 15 specific representations that we walked 16 through in your declaration? 17 A. No. 18 Q. To the extent, when you were 19 CFO of Congoleum, what was your 20 involvement in providing information to 21 Ernst & Young in connection with their 22 audits of financial statements of 23 Congoleum? 24 A. We gave them whatever they 25 wanted.</p>	<p style="text-align: right;">Page 189</p> <p>1 of the financial statements of Congoleum 2 Corporation as of December 31st, 2006." 3 Right? 4 A. Right. 5 Q. And so this is, the date of 6 this letter is, you know, give or take 7 nine or ten months after your declaration 8 to the Bankruptcy Court in regard to the 9 Century settlement that you looked at, 10 right? 11 A. Yes. 12 Q. If you flip to page 5, which 13 has a Bates number in the bottom of 14 CONG_47585. And there is a number 2 and 15 there is a list of the -- there is an 16 underlying sentence that says Diamond 17 Alkali Superfund site of the Passaic 18 River area study. Do you see that? 19 A. Yes. 20 Q. And it reads "The United States 21 EPA served Congoleum Corporation with a 22 request for information late December 23 1996 concerning possible discharges from 24 Congoleum's former Kearny, New Jersey 25 plant into the Passaic River. Congoleum</p>

<p>1 has responded to EPA's request for 2 information." Do you see that? 3 A. Yes. 4 Q. And in discussing that 5 potential liability with Congoleum's 6 auditors, Mr. Hewit wrote, if you skip 7 down a paragraph, "Congoleum owned and 8 operated a manufacturing facility at the 9 Kearny site from the late 1880's to the 10 early or mid-1970's and then maintained 11 administrative offices in a small 12 laboratory at the site until the 13 mid-1980's." 14 Do you see that? 15 A. Yes. 16 Q. And Mr. Hewit is more familiar 17 with the history of the company than you, 18 correct? 19 MR. WEBER: Objection to the 20 form. 21 A. I don't know if he's more 22 familiar. I would say we probably looked 23 at the same histories. 24 Q. Okay. And the last page here, 25 you get a cc of this letter to the</p>	<p>Page 190</p> <p>1 you recall submitting another declaration 2 in the Bankruptcy Court in 2009 in 3 relation to a summary judgment motion? 4 A. I am trying to get my bearings 5 on this. 6 Q. Stick with the first page 7 first, if you read that first sentence it 8 might help to orient you. 9 A. Okay. 10 Q. And the declaration starts -- 11 this is 2009, right? So almost two and a 12 half, three years, getting close to three 13 years, two and a half years after your 14 declaration that we looked at in relation 15 to the Century policies. And it starts 16 off with "Howard N. Feist, III under 17 penalty of perjury hereby declares as 18 follows." 19 Do you see that? 20 A. Yes. 21 Q. On the first page, there is a 22 subheading "Congoleum's Operations," and 23 then "Overview of Congoleum's Business," 24 right? 25 A. Yes.</p>
<p>1 auditors, correct? 2 A. Yes. 3 Q. And that statement that 4 Mr. Hewit made to your auditors as part 5 of financial reporting requirements of 6 publicly traded Congoleum at the time, 7 you have no reason to believe that 8 statement is inaccurate in any way, 9 right? 10 A. That particular paragraph? 11 Q. The sentence I read, yes. 12 A. I don't have any reason to 13 think it's inaccurate. 14 Q. And that representation to your 15 auditors, that's not in the context of 16 specific insurance policies, is it? 17 A. No. 18 Q. You can put that document to 19 the side. This is going to be Feist 20 Exhibit 19. 21 (Feist Exhibit 19, 2009 22 declaration in relation to summary 23 judgment motion, was so marked for 24 identification, as of this date.) 25 Q. So Exhibit 19, Mr. Feist, do</p>	<p>Page 191</p> <p>1 Q. And your declaration to the 2 Bankruptcy Court was in paragraph 2, 3 "Congoleum was incorporated in Delaware 4 in 1986 but traces its corporate history 5 back to the Nairn Linoleum Company which 6 commenced operations in 1886." 7 Do you see that? 8 A. Yes. 9 Q. And do you recall why you had 10 to make that representation as part of 11 this summary judgment motion? 12 A. No. That's verbatim from the 13 10-K. 14 Q. Right. And have you looked at 15 this recently? 16 A. This? 17 Q. Yeah. 18 A. No. 19 Q. You're just familiar enough 20 with the 10-K, you know that that similar 21 language is in numerous 10-Ks filed with 22 the investing public, correct? 23 A. Right. Yes. 24 Q. And so fair to say that 25 paragraph 2 there in your declaration to</p>

<p>1 the Court is a true and accurate 2 statement? 3 A. Yes. 4 Q. And similarly, that statement 5 reiterated to the investing public by 6 Congoleum in 10-Ks is a true and accurate 7 statement, correct? 8 A. Yes. 9 Q. You can put that document to 10 the side. Actually, sorry, hold on, 11 we're going to go to paragraph, page 35 12 of your declaration. So on page 34, 13 actually there is a discussion of the 14 effect of conversion or dismissal of the 15 Chapter 11 cases. And you discuss the 16 current financial condition in the 17 following paragraphs. 18 In paragraph 98, it reads "If 19 the company successfully reorganizes, its 20 free cash flow will be used to retire the 21 senior notes under the amended joint 22 plan, for pension liabilities, contract 23 claims, lease obligations, environmental 24 claims and other indebtedness." 25 Do you see that?</p>	<p style="text-align: right;">Page 194</p> <p>1 wanted in the plan, was cash so you could 2 settle pending environmental claims, 3 correct? 4 A. It was cash to run the business 5 for whatever the needs of the business 6 might be. 7 Q. Including those that were 8 pending environmental claims as 9 specifically enumerated right here, 10 correct? 11 A. These were general. Whatever 12 the needs might be. 13 Q. Is this false what you told the 14 Bankruptcy Court? 15 A. No, it was not false. 16 Q. That was one of the things you 17 represented to the Court, you wanted free 18 cash flow for environmental claims, 19 correct? 20 A. Yes. 21 Q. Also Workers' Compensation 22 claims are referenced in a different 23 paragraph here, if you want to go forward 24 to paragraph 127 on page 45 here. It 25 says under the amended joint plan, "The</p>
<p>1 A. Yes. 2 Q. And so the point is, one of the 3 things Congoleum was trying to get in 4 coming out of bankruptcy was that it 5 would have money to settle pending 6 environmental claims against it, correct? 7 A. Yeah, when the bankruptcy test 8 is that the outcome in a reorganization 9 is better for the creditors than a 10 liquidation. So this was a statement to 11 basically make that point. 12 Q. Right, and so just to be clear, 13 though, to my question, one of the things 14 that was being stated was you wanted in 15 the plan the ability to pay pending 16 environmental claims against Congoleum 17 going forward, right? 18 A. I mean the statement says what 19 it says. 20 Q. Let's divorce ourselves from 21 the statement. Do you recall the plan 22 that you helped put forward on behalf of 23 Congoleum? 24 A. Yes. 25 Q. And part of the plan, what you</p>	<p style="text-align: right;">Page 195</p> <p>1 debtors will be in a position to use 2 their cash flow to pay their 3 post-petition and some pre-petition 4 unsecured claims in the ordinary course 5 such as," and it lists several things, 6 including four Workers' Compensation 7 claims and five environmental cleanup 8 costs. 9 Do you see that? 10 A. Yes. 11 Q. Do you recall there being at 12 any time Workers' Compensation claims 13 related to workers at Kearny that 14 Congoleum was still working to resolve 15 after 1986? 16 A. I don't recall specifically. 17 We had self-insured. So some of the 18 Workers' Comp programs, you know, it 19 wasn't just like when you buy a policy 20 and you're done with it. They were 21 self-insured. 22 So we had ongoing payment 23 obligations for some of the workers. But 24 the dates of when their injuries took 25 place, I wouldn't know.</p>